

December 4, 1973

Subject: Renegotiation of Air America/Air Asia/Air America Limited  
Renegotiable USG Contract Business for the Corporate Fiscal  
Years 1967 and Thereafter

Section 103 of the Renegotiation Act defines the term "excessive profits" which are the objects of recapture under the Act. That definition includes a statement of principals and factors to be considered in determining whether excessive profits exist. A copy of that statutory definition is attached. (The Regulations of The Renegotiation Board contained in Section 1460 elaborates somewhat upon the consideration of such factors.)

There is no exact or fixed dollar amount, or percentage of profit, upon "renegotiable" sales, which the Board is obligated to allow or beyond (in excess of) which the Board may not allow; rather, the Board is obligated to and may look at all relevant factors such as the percentages of profit made by competitive companies in similar activities, etc., as well as a consideration of the specific factors in Section 103 of the Act and Section 1460 of the Board's regulations (noted above).

The data filed by Air America with the Board reflect profit percentages for the six fiscal years ended March 31, 1967 through March 31, 1972, varying from 6.18% in 1971 to 12.05% in 1967. In our discussions with Board staff we have stated that, in our opinion, under the circumstances of the operations of the Air America complex the percentages of profit indicated upon its renegotiable business are not excessive due primarily to the extent of the risks assumed in the corporate operations, by geography and by nature, and to the character of its business. It thus appears that Air America's best presentations under the

the Act and the Board's Regulations might be addressed to such risk and character items, which are items (3), (4), (5) and (6) enumerated in Section 103 of the Act. That is, it is unreasonable to expect that corporate capital (profit-seeking business or venture capital) would be employed in the geographic area and under the risk conditions as has been Air America's capital at only the same, or approximate, rates of return or percentages of gross profit before taxes on sales, as that capital could be employed in either the domestic United States or in other world regions not having the risk nature to which Air America's operations have been subject.

The geographic area of its flying and maintenance operations in Southeast Asia which include the zones of hostilities in 1967-1973 period, is a self-evident risk factor. Other elements within the factor criteria of the Act should include: the self-insurance undertaking of the company both with respect to employee obligations (such as Workman's Compensation coverages under Federal statutes) and with respect to self-insuring its aircraft -- both high-risk and high exposure business risks. (The only justifications for insurance undertakings are a wide base of coverage (a large number of people, or a large body of property) undertaken over an extended period of time; these two fundamental premises for insurance do not in fact exist where Air America is concerned.) As of this moment, in the Workman's Compensation insurance area alone, Air America has a present liability to dependent survivors of American personnel killed in line of duty, based upon their probable life expectancy, of \$\_\_\_\_\_. (These obligations continue and should Air America's business cease these obligations would have to be met out of current accumulated cash.) Somewhat similarly, Air America is currently paying out \$\_\_\_\_\_ a month (\$\_\_\_\_\_ per year) to dependents of missing personnel, adjudication upon which is presently

indeterminable. The company's records will reveal the number of aircrew and other personnel who died (essentially hostile action deaths) in line of duty during the renegotiable period, the persons injured in like manner during that period; the persons missing during that period; the number of aircraft accidents and incidents which occurred during that period, including those due to hostile actions -- all of which should point up the unusual and extensive risk nature of Air America's business as compared with any normal aviation business risk. Similarly, the personnel and cargo pay loads air lifted in its Southeast Asia operations will evidence the unique and high-risk character of its business which should be evaluated by the Board. All of these elements should also be considered within the statutory factor of the "nature and extent of contribution to the defense effort".

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Air America has been in corporate existence since July 10, 1950 and at all times since has performed one or more contracts with DOD; for the period through March 31, 1966 (over 16 years) the obtained exception by The Renegotiation Board under the Renegotiation Act. The bases for such prior exemptions were as extant for the period since March 31, 1966.

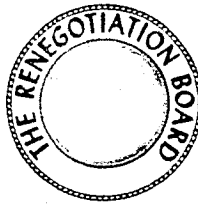
(c) Excessive Profits.—The term "excessive profits" means the portion of the profits derived from contracts with the Departments and subcontracts which is determined in accordance with this title to be excessive. In determining excessive profits favorable recognition must be given to the efficiency of the contractor or subcontractor, with particular regard to attainment of quantity and quality production, reduction of costs, and economy in the use of materials, facilities, and manpower; and in addition, there shall be taken into consideration the following factors:

- (1) Reasonableness of costs and profits, with particular regard to volume of production, normal earnings, and comparison of war and peacetime products;
- (2) The net worth, with particular regard to the amount and source of public and private capital employed;
- (3) Extent of risk assumed, including the risk incident to reasonable pricing policies;
- (4) Nature and extent of contribution to the defense effort, including inventive and developmental contribution and cooperation with the Government and other contractors in supplying technical assistance;
- (5) Character of business, including source and nature of materials, complexity of manufacturing technique, character and extent of subcontracting, and rate of turn-over;
- (6) Such other factors the consideration of which the public interest and fair and equitable dealing may require, which factors shall be published in the regulations of the Board from time to time as adopted.

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WASHINGTON, D.C. 20446  
December 4, 1973

Air America, Inc.  
1725 K Street, N. W.  
Washington, DC 20006

Attention: Clyde S. Carter, Senior Vice President

Reference: Air America, Inc.  
LPI No. 96507

Air Asia Company Limited  
LPI No. 96508

Air America Limited  
LPI No. 96651

Gentlemen:

We have received your December 3, 1973 letter regarding renegotiation on a consolidated basis with Air America, Inc. as agent for the group. Specifically, the consolidations consist of:

1. Air America, Inc. and Air Asia Company Limited for the fiscal years ended March 31, 1967 and 1968;
2. Air America, Inc., Air Asia Company Limited and Air America Limited for the fiscal years ended March 31, 1969, 1970, 1971 and 1972.

The Board has empowered me to advise you that renegotiation will be conducted at the Statutory Board, as you requested, for the above referenced companies and the fiscal years for which they have filed.

Should you have any questions regarding this or any other renegotiation matters, please contact me.

Very truly yours,

A handwritten signature in dark ink, appearing to read "J. W. McNamara", is written over the typed name and title.  
J. W. McNamara  
Director  
Office of Assignments

*Re-copied to T/C - 12/5/73*

**SECRET**

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OGC:LRH:mks  
4 December 1973

The Honorable William S. Whitehead  
Chairman  
Renegotiation Board  
2000 M Street, N. W.  
Washington, D. C. 20446

Dear Mr. Whitehead:

Forwarded herewith is an unclassified letter informing you that renegotiation of the contract between Air America, Inc. and the Government agencies involved which is pending before the Renegotiation Board is not in the best interests of the Government. That letter is unclassified.

As you know, the classified aspect pertains to the true relationship between the Central Intelligence Agency and Air America, Inc. through which all funds derived by Air America, Inc. from its Government contracts and excess to its needs in carrying out those contracts will be recovered for the Government by the Central Intelligence Agency.

Aside from the problems stated in the referent letter, it would appear to serve no useful purpose to pursue the lengthy and expensive actions involved in the renegotiation under circumstances where there is no net gain to the Government and, in fact, a net loss from the expenses incurred.

Very truly yours,

**SECRET**

Roy L. Ash

Director

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DRAFT  
OGC:LRH:mks  
4 December 1973

The Honorable William S. Whitehead  
Chairman  
Renegotiation Board  
2000 M Street, N. W.  
Washington, D. C. 20446

Dear Mr. Whitehead:

The United States Government agencies who are customers of Air America, Inc., have expressed concern in connection with the renegotiation proceedings now pending before the Renegotiation Board. These agencies have important requirements for air support in Southeast Asia and are of the opinion that it is essential that Air America be in a position to carry out its contractual commitments and further requirements for such services.

The air support operations in Southeast Asia are unique in nature. Almost every operation is tailor-made to fit the special conditions at the time. The flying conditions are hazardous not only from the nature of the terrain and accompanying weather conditions, but also because there are few, if any, of the normal Government-provided flight controls and navigational aids. In many areas there are unfriendly armed forces with considerable antiaircraft capabilities. To meet these conditions, Air America and the Government have had to work intimately together to arrange for the most efficient and safe operation that the conditions will allow. This includes the bailment



of special purpose Government airplanes to the company in addition to the specialized fleet of aircraft owned by the company.

In connection with its own fleet, the company has had to maintain a self-insurance program in face of the unusual hazards specified above. In addition to this unpredictable financial load, the company has been required by the Government to maintain an operational posture in which it has the capability to increase or decrease service to the United States Government at a moment's notice. Again, this places unpredictable financial burdens on the company.

Circumstances are such that the Government might find it necessary to cancel all contracts with minimum notice even though the company still has sizeable obligations to its employees with no other business opportunities in sight. All of these circumstances constitute an inherently risky business venture which is compounded by Government requirements of special security conditions in certain of the activities. Due to the intimate relationships between the Government agencies concerned and the company, the contracts with the company are negotiated on the basis of detailed knowledge of the company's costs and these negotiations are fully participated in by the DCAA.

We note that the contract between Air America and the Department of Defense had previously been exempted by the Renegotiation Board and their requirements for renegotiation in accordance with Section 106(d)(1) of the Renegotiation Act of 1951, as amended, and Part 1455.2(d) of the regulations of the Board. These exemptions were granted by the Board by letters of April 10, 1956; May 16, 1958; October 23, 1959; April 3, 1963; and May 24, 1966, covering the years 1952 through June 30, 1966. There has been no change in the contractual relationship of the Government to the company since the date of the last exemption and it, therefore, appears that the Department of Defense is justified in its request to you of 24 September 1973 to exempt the subsequent Air America contracts from renegotiation based on the same circumstances as were stated for the period for which exemption was granted by your Board. It appears, therefore, that renegotiation at this time of contracts subsequent to the 1966 exemption for current contracts would not be in the best interests of the Government.

Very truly yours,

Roy L. Ash  
Director

(Office of Management and Budget)

DRAFT/12/4/73

1. We have received expressions of concern from U.S. Government customers of Air America, Inc. relative to the renegotiation matter now pending before the Renegotiation Board. The concern expressed deals with the customer's interest in insuring that the services of Air America, Inc. are available to U.S. Government customers in Southeast Asia in the future.

2. It has been pointed out that Air America, Inc. performs duties of a most unique nature and that the Company has developed an extremely close relationship with the U.S. Government in Southeast Asia. Agreements have been reached between the Government and Air America whereby U.S. Government aircraft are bailed to the Company so the Company can carry out sensitive contracts of interest to the U.S. Government. The operation of Air America has indeed been molded to fit the requirements of the U.S. Government.

3. During the past several years flying performed by Air America in Southeast Asia has been performed under most hazardous conditions to both the Company and its personnel. The Company has been requested by Government contractors to maintain a sufficiently strong financial condition, to maintain a fleet of aircraft to support U.S. Government requirements and to be in a position to replace these aircraft through a self-insurance program in the event of their destruction. The Company has also been requested by the Government to maintain

an operational posture whereby it can maintain the capability to increase or decrease its service to the U.S. Government on a moments notice. Finally, the Company has been alerted that it should maintain its financial posture on such a basis that the Company could carry out its obligations to its employees in case the U.S. Government found it necessary to cancel all contracts on an abrupt basis. All of the above governmental requests seem to us to dictate that the Company must maintain a sufficiently profitable level to be capable of carrying out these requests.

4. We feel that the unusual requirements levied on the Air America, Inc. by the U.S. Government should be taken into consideration in the matter concerning Air America now pending before the Renegotiation Board. We would hope that the Renegotiation Board would grant the request for exemption forwarded to the Board by the Department of Defense on \_\_\_\_\_. We feel that a decision not giving full cognizance to the unique circumstances under which Air America operates could have a serious affect on the ability of the Company to carry out a number of contracts in Southeast Asia which are considered vital to the carrying out of U.S. Government policies in that part of the world.

12/3/73 OLC/ [ ] - Hall

J. Lee Martin, Counsel, House  
Days & Means. Martin  
thought ridiculous, but  
concerned that RB may  
have positive statutory  
obligation to proceed.  
Meeting broke up before he  
could explain facts and  
statutory exemptions. Will  
see Martin again soon.

RB waiving regional  
Board proceedings. Case to  
be handled by "Statutory  
Board" - Time pressure  
off.